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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/798,491	03/11/2004	Kenneth E. Kellar	60264-USA-DIV1	6264

7590 07/18/2006

Patent Administrator
FMC Corporation
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EXAMINER	
DOUYON, LORNA M	

ART UNIT	PAPER NUMBER
1751	

DATE MAILED: 07/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/798,491	KELLAR ET AL.	
	Examiner	Art Unit	
	Lorna M. Douyon	1751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *18 April 2006*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *37-53* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *37-53* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

1. This action is responsive to the amendment filed on April 18, 2006.

2. Claims 37-53 are pending.

3. The objection to claims 42, 50, 52 and 53 for minor informalities is withdrawn in view of Applicants' amendment.

4. The objection to the specification is withdrawn in view of Applicants' amendment.

5. The rejection of claims 37, 39, 40, 42 and 49 under 35 U.S.C. 102(b) as being anticipated by Hutchings (US Patent No. 4,861,514) is withdrawn in view of Applicants' amendment.

6. The rejection of claims 37, 39, 40, 41 and 49 under 35 U.S.C. 102(e) as being anticipated by Asgharian (US Patent No. 6,316,506) is withdrawn in view of Applicants' amendment.

7. The rejection of claims 37, 39, 40, 43 and 49 under 35 U.S.C. 102(b) as being anticipated by Tanaka et al. (US Patent No. 4,500,441) is withdrawn in view of Applicants' amendment.

8. The rejection of claims 37-43, 48-51 under 35 U.S.C. 102(e) as being anticipated by Hei et al. (US Patent No. 6,663,902), hereinafter "Hei" is withdrawn in view of Applicants' amendment.

9. The rejection of claims 44 and 45 under 35 U.S.C. 103(a) as being unpatentable over Hei as applied to the above claims, and further in view of Gutzmann et al. (US Patent No. 6,183,807) is withdrawn in view of Applicants' amendment.

10. Claims 37-53 stand rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-19, 31-35 of U.S. Patent No. 6,828,294 in view of Hei for the reasons set froth in the previous office action, and which is reproduced below.

US '294 teaches a similar sanitizer composition, method of sanitizing a surface and a sanitizer kit with the exception of a biopolymer in an amount from about 0.025 wt% to about 1.0 wt%.

Hei teaches a similar sanitizer composition comprising thickeners like guar gum and xanthan gum to enhance the viscosity of the composition to cling to the surface being treated (see col. 8, lines 12-15; 38-43), for easy and effective application, and for improved prophylactic effect (see col. 9, lines 7-13). In Table 6, Hei teaches a composition comprising a thickener like xanthan gum in an amount of 0.3 wt% (see col. 23, lines 6-25).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate a thickener like guar gum or xanthan gum into the sanitizer composition of US' 294 in an amount of, say, 0.3 wt%, because this would enhance the viscosity of the composition in order to cling to the surface being treated, for easy and effective application, and for improved prophylactic effect to the composition as taught by Hei.

11. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

12. Claims 37-45, 48-50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dankowski et al. (US Patent No. 4,879,057), hereinafter "Dankowski".

Dankowski teaches aqueous bleaching agent suspensions based on a water-soluble peroxycarboxylic acid suspended in a carrier liquid in the presence of an organic thickening agent such as xanthan polysaccharide in an amount of 0.01 to 5% by weight or agar polysaccharide in an amount of 0.05 to 0.5% by weight, and hydrate-forming neutral salts (see abstract; col. 4, lines 19-24). The bleaching agent suspensions contain 1-40% by weight peroxycarboxylic acid (see col. 3, lines 53-56). Water-insoluble, aliphatic peroxycarboxylic acids with one, two or three peroxycarboxylic acid groups can be used (see col. 3, lines 35-37), which would include peracetic acid. Suspensions with 50 to 100 mPas (50 to 100 cps) are especially preferred (see col. 3, lines 3-5). Hydrate-forming neutral salts are those of alkali metals of magnesium or of aluminum with sulfuric acid or tripolyphosphoric acid in an amount of 1 to 40% by weight (see col. 4, lines 54-60, claim 4). Other substances added to the suspension include anionic and/or non-ionic surfactants, e.g. alkyl benzene sulfonates, alkyl ether sulfates, alkyl sulfonates, ethoxylates and/or propoxylates of fatty alcohols, alkyl phenols, fatty acids or fatty acid amides, in an amount up to 20% by weight (see col. 6, lines 12-20). The bleaching agent suspension is added to the washing liquid in such an amount that the available oxygen which can be released from the peroxycarboxylic acid amounts to 1 to 100 ppm (see col. 7, lines 16-20). Dankowski, however, fails to specifically disclose a suspension comprising

peroxycarboxylic acid and xanthan thickener in amounts as those recited, and the ratio of the anionic and nonionic surfactant as those recited.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to optimize the proportions of the peroxycarboxylic acid, xanthan thickener, anionic and nonionic surfactant because it has been held to be obvious to select a value in a known range by optimization for the best results. As to optimization results, a patent will not be granted based upon the optimization of result effective variables when the optimization is obtained through routine experimentation unless there is a showing of unexpected results which properly rebuts the *prima facie* case of obviousness. See *In re Boesch,* 617 F.2d 272, 276, 205 USPQ 215, 219 (CCPA 1980). See also *In re Woodruff*, 919 F.2d 1575, 1578, 16 USPQ2d 1934, 1936-37 (Fed. Cir. 1990), and *In re Aller*, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955). In addition, a *prima facie* case of obviousness exists because the claimed ranges "overlap or lie inside ranges disclosed by the prior art", see *In re Wertheim,* 541 F.2d 257, 191 USPQ 90 (CCPA 1976; *In re Woodruff,* 919 F.2d 1575, 16USPQ2d 1934 (Fed. Cir. 1990). See MPEP 2131.03 and MPEP 2144.05I.

Response to Arguments

13. Applicant's arguments filed April 18, 2006 have been fully considered but they are not persuasive.

With respect to the obviousness-type double patenting rejection over U.S. Patent No. 6,828,294 in view of Hei, Applicants argue that the present application is a divisional of Application 10/213,027 which issued as US 6,828,294 and that the present claims were

withdrawn from that application following a Restriction Requirement, and that the double patenting rejection is improper.

The Examiner respectfully disagrees with the above arguments because the obviousness-type double patenting rejection is proper for the reasons stated above. A careful review of the parent application 10/213,027 shows no evidence of a restriction requirement. Accordingly, said rejection is maintained.

Conclusion

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The references are considered cumulative to or less material than those discussed above.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lorna M. Douyon whose telephone number is (571) 272-1313. The examiner can normally be reached on Mondays-Fridays from 8:00AM to 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Douglas McGinty can be reached on (571) 272-1029. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Lorna M. Douyon
Primary Examiner
Art Unit 1751